**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.299 OF 2007**
**IN**
**APPEAL FROM ORDER NO.202 OF 2007**

Sopan Ganpat Bhosale ...Applicant

Versus

Abhimanyu Mahadeo Raut & Ors. ...Respondents

Shri L.S.Gaikwad for the Applicant.
Ms Lalita Panchakshari for the Respondent No.1.
Mrs Kalyani Shinde for the Respondent Nos.3,5, 6 and 7.

**CORAM : ABHAY S.OKA, J.**
**DATED : MARCH 29, 2007.**

**P.C.:**

1. Rule. The Advocate for the first Respondent waives service. The first Respondent is the original Plaintiff and therefore, service of notice to other Respondents is dispensed with.

2. The first Respondent Plaintiff filed a suit in the year 1995 for specific performance of Agreement of Sale dated 13th January, 1991 executed by the second to fourth Respondents herein. Alongwith the suit an Application for temporary injunction was filed. In the said Application admittedly no injunction was claimed for protection of alleged possession of the first Respondent and the said Application was not pressed. In

the year 2006, an Application at Exhibit 54 was filed by the first Respondent for injunction restraining the Applicant/Appellant (original second Defendant) from interfering with alleged possession of the first Respondent over the suit property. The Applicant is claiming on the basis of Sale Deeds executed in July 1991 in his favour. The learned trial Judge by the impugned order has allowed the Application by holding that the first Respondent was placed in possession on the basis of the suit agreement.

3. Perusal of the suit agreement shows that there is no recital which records that on the basis of the agreement or in part performance thereof the first Respondent was placed in possession. Reliance is placed on a power of attorney executed in favour of the first Respondent. Even the said power of attorney does not suggest that the first Respondent was placed in possession in part performance of Agreement of Sale which was subject matter of the suit. It is an admitted position that during pendency of Application at Exhibit 54 there was no ad-interim relief operating in favour of the first Respondent. Considering the aforesaid aspects, a case is made out for staying the operation of

the impugned Judgment and Order. Accordingly, Application is allowed in terms of prayer clause (a).

4. It is made clear that the observations made in this order are for limited purposes of considering prayer for stay made by the Applicant and the trial Court will decide the suit without being influenced by either the impugned order or by observations made in this order.

**JUDGE**